

Remarks

I. THE EXAMINER FAILED TO ADDRESS APPLICANT'S ARGUMENTS REGARDING UNEXPECTED RESULTS IN THE ADVISORY ACTION

In response to the Examiner's Office Action mailed March 10, 2004, applicants filed a Reply on June 10, 2004 which argued patentability over the cited documents in light of: (a) the lack motivation in the cited documents to achieve the claimed invention, (b) the mere obvious to try rationale, and (c) in light of the *surprising and unexpected results* discovered by applicants to be associated with the compositions and methods of the claimed invention. The Examiner's Advisory Action mailed on August 18, 2004 addressed applicant's arguments regarding lack of motivation and obvious to try rationale, but failed to provide any comment on or any indication of consideration of applicant's surprising and unexpected results as required, for example, by MPEP 716.02(c). Applicants respectfully submit that the unexpected results, as illustrated in the applicant's reply of June 10, 2004 and as further illustrated below, clearly overcome any asserted case of *prima facie* obviousness. Applicants request full consideration of such unexpected results.

II. THE CLAIMED INVENTION IS PATENTABLE OVER THE EXAMINER'S COMBINATION OF REFERENCES

The Examiner rejected claims 1-6, 8-27, 29-38, and 42-50 under 25 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,551,607 to Minerath, III et al. ("Minerath")¹ in light of U.S. Pat. No. 5,436,007 to Hartung et al. ("Hartung").

Applicants respectfully continue to submit that such combination of references fails to provide the requisite motivation to achieve the claimed invention therefrom and the claimed invention is patentable thereover for this reason alone. Nevertheless, applicants note that the claimed invention is further patentable over the asserted combination of references in light of the surprising and unexpected results associated therewith.

¹ Applicants do not necessarily agree that this patent is properly cited as prior art and hereby reserve the right to swear behind such document hereafter.

In particular, applicants have unexpectedly discovered that compositions of the present invention comprising both a clay and at least one peptizing agent are surprisingly highly effective at inhibiting enzymes in the presence of urine, as compared to other clay-containing compositions. For example, as shown in Table A, pages 15-19 of the application, applicants produced several compositions of the claimed invention comprising clay and at least one peptizing agent (for example, sample nos. 9-14 and 16-21) and several compositions comprising clay in the absence of a peptizing agent (for example, sample nos. 8 and 15) and have tested them for enzyme inhibition in the presence of urine. As shown in Table C, for example on page 24 of the application, the compositions of the present invention tended to be consistently more effective, and usually **at least 1.5 to 2.5 times** as effective at inhibiting enzymes as compared to the compositions comprising clay in the absence of peptizing agent (compare, for example, the results for samples 8 and 15 with samples 9-14 and 16-21). Such surprising results allow for the advantageous production of compositions which are relatively more effective at inhibiting enzymes in the presence of urine, which discovery is of significant importance, for example, in the production of diaper rash compositions.

Neither Minerath nor Hartung teaches any composition comprising the specific combination of clay with a peptizing agent, nor recognizes any unexpected results associated with such combination. Accordingly, such references fail to teach or suggest the claimed invention, and the claimed invention is patentable thereover.

III. CONCLUSION

In light of the above, applicant respectfully submits the application is in condition for allowance and requests an early notice of allowance for this application. Should the Examiner have any questions regarding this submission, please contact the undersigned. Respectfully submitted,

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